IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
And
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WP No. 21770 of 2006

Between :

M/s. Raghava Estates Limited .. Petitioner
Vijayawada rep. by its Joint Managing Director Mr.L.Tulasi Prasad

And

The Commercial Tax Officer, Benz Circle, Vijayawada and two others .. Respondents

Dated : 23rd October, 2006

ORDER : (per JC,J)

Writ Petition is filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction quashing the order of the 3rd respondent in LV(2)/1032/2006, dated 19.7.2006 refusing to grant stay of collection of disputed tax as illegal, arbitrary and

> contrary to law and consequently restrain the 1st respondent from taking any coercive steps for recovery of disputed tax of Rs.2,24,024/- for the assessment year 2000-01 pending disposal of the appeal before the Sales Tax Appellate Tribunal and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner is a Limited Company carrying on the business of Works Contract and an assessee on the rolls of the 1st respondent. For the assessment year 2000-01 the petitioner opted to pay tax under Section 5-G of the Andhra Pradesh General Sales Tax Act, 1957. Section 5G was inserted by Act No. 22 of 1995 w.e.f. 1.4.1995 and the 2nd proviso therein was added by Act No. 2 of 1998. Section 5G reads as follows :

> "**5G. Composition of tax payable under section 5F :** (1) Subject to such conditions and in such circumstances as may be prescribed if a dealer, who executes any works contract other than the category of contracts notified by the Government under sub-section (2), so opts, the assessing authority of the area may accept, in lieu of the amount of tax payable by him under the Act during the year, by way of composition, an amount at the rate of four paise on every rupee of the total amount paid or payable to the dealer towards execution of the works contract :

Provided that no tax shall be payable under this section on the turnover relating to the amounts paid to a sub-contractor as consideration for the execution of the works contract whether wholly or partly subject to the production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that the turnover of such amounts is included in the return of the turnover filed by such sub-contractor.

Provided further that if a dealer who executes a works contract of construction of apartments or buildings, so opts, the assessing authority of the area may accept, by way of composition an amount calculated at the rate of rupees 4/- (Rupees four only) per square foot of the constructed area.

(2) The Government may notify from time to time the category of works contract for which the scheme of payment of tax by composition under sub-section (1) does not apply.

(3) Every dealer who elects to pay tax under sub-section (1) shall apply in the prescribed form to the assessing authority to be permitted to pay the amount of tax under sub-section (1), and on being so permitted, in the prescribed form, he shall pay tax as specified under Section 13 and 15 of the Act.

(4) Nothing contained in sub-section (1) shall apply to a dealer, who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract."

In substance, the proviso authorizes the levy and collection of tax at the rate of Rs.4/- per square foot of the constructed area to the person executing the works contract. The petitioner paid a tax at the rate of Rs.4/- on a total area declared by him to have been constructed by him. The said declaration was accepted by the assessing authority and an assessment order dated 25.2.2002 was passed. However, the 2nd respondent in exercise of the power under Section 20(2) of the APGST Act proposed to revise the assessment and the 2nd respondent revised the assessment and came to the conclusion that the petitioner is liable to pay a higher rate of tax than the one determined by the assessing authority. Aggrieved by the same, the petitioner carried the matter in appeal before the Sales Tax Appellate Tribunal. Simultaneously, he moved an application before the 3rd respondent seeking stay of the recovery of the disputed tax. The said application was rejected by the 3rd respondent on 19.7.2006 and hence the present writ petition.

Heard the learned Government Pleader.

In the circumstances, we are of the opinion that the matter can be disposed of at this stage directing the respondents not to take any coercive steps for the recovery of the tax on condition the petitioner deposits 50% of the tax demanded within a period of four weeks from today. While computing the said amount of 50%

mentioned above, the amount of tax if any paid already for the relevant assessment year shall be given credit to while computing the above mentioned amount of 50%.

Writ Petition is accordingly disposed of.

(J.CHELAMESWAR, J)

(M.VENKATESWARA REDDY,J)

23rd October, 2006.

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